

Court of Appeals, State of Michigan

ORDER

People of MI v David Robert Seastrom

Docket No. 343909

LC No. 17-009566-FH

Amy Ronayne Krause
Presiding Judge

Peter D. O'Connell

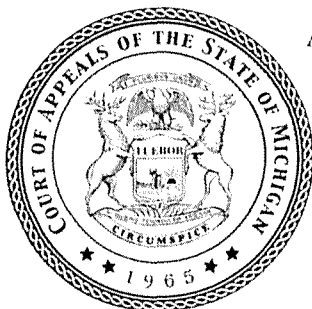
Brock A. Swartzle
Judges

The Court orders that the delayed application for leave to appeal is GRANTED. The time for taking further steps in this appeal runs from the date of the Clerk's certification of this order. MCR 7.205(E)(3). This appeal is limited to the issues raised in the application and supporting brief. MCR 7.205(E)(4).

Ronayne Krause, P.J., concurs however, I would order, pursuant to MCR 7.205(E)(2), that defendant's sentence be vacated, and the matter remanded for resentencing. The trial court erred by assigning 50 points to offense variable (OV) 20, MCL 777.49a, because defendant's threats were not acts of terrorism. Threats alone can amount to an act of terrorism, if all of the elements of MCL 750.543b are satisfied. *People v Osantowski*, 481 Mich 103, 109; 748 NW2d 799 (2008). But because all of the elements of MCL 750.543b must be satisfied, "an offender may threaten to commit an act of terrorism, MCL 750.543m(1)(a), without committing an act of terrorism or being guilty of terrorism, MCL 750.543b(a); MCL 750.543(f)(1)." *Osantowski*, 481 Mich App at 110. "To constitute an act of terrorism, a threat must be a violent felony and also must itself be 'a willful and deliberate act' that the offender 'knows or has reason to know is dangerous to human life' and 'that is intended to intimidate or coerce a civilian population or influence or affect the conduct of government or a unit of government through intimidation or coercion.' MCL 750.543b(a)." *Osantowski*, 481 Mich at 109. An act is "dangerous to human life" if it "causes a substantial likelihood of death or serious injury or . . . is a violation of [MCL 750.]349 or [MCL 750.]350." MCL 750.543b(b). There is no indication whatsoever that defendant knew or should have known that his threats would create a substantial likelihood of death or serious injury, nor did any such circumstances actually come to fruition because of his threats. Further, defendant's threats did not violate MCL 750.349 or MCL 750.350; these statutes have no

application to the facts of the present matter. Accordingly, it was error to assign 50 points to OV 20. Because the error affects defendant's minimum sentence range under the sentencing guidelines, defendant must be resentenced. *People v Francisco*, 474 Mich 82, 92; 711 NW2d 44 (2006).

Based on the case law, I see no reason to have plenary review of this matter.



A true copy entered and certified by Jerome W. Zimmer Jr., Chief Clerk, on

JUL 26 2018

Date


Chief Clerk